

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/11/2023
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ANTHONY FABIANI,

Plaintiff,

-v-

ANDREW M. SAUL, *Commissioner of Social Security*

Defendant.  
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21-cv-05453 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On June 22, 2021, Plaintiff Anthony Fabiani instituted this action seeking review of the Social Security Administration’s (“SSA”) denial of disability benefits. Dkt. No. 1. In February 2022, the parties agreed to remand to the SSA pursuant to 42 U.S.C. § 405(g) for further proceedings. Dkt. No. 14. In March 2022, the parties stipulated that the SSA would pay attorney’s fees in the amount of \$7,500 pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. Dkt. No. 17.

Upon remand to the SSA, an Administrative Law Judge found Fabiani to be disabled and entitled to benefits. Dkt. No. 20. As part of a retainer agreement with his attorney, Fabiani agreed to pay his attorney twenty-five percent of the past-due benefits. Dkt. No. 20-2.

By Notice of Award dated September 23, 2023, the SSA informed Fabiani that he was entitled to past due benefits in the amount of \$205,028, and that it had withheld \$51,257—twenty-five percent of the past due benefits—to pay Fabiani’s counsel. Dkt. Nos. 20, 20-1.

On October 2, 2023, Plaintiff filed a motion for attorney’s fees in the amount of \$51,257 pursuant to 42 U.S.C. § 406(b)(1). Dkt. Nos. 18, 19. The government responded neither

opposing nor supporting the Plaintiff's letter. Dkt. No. 22 at 1. On October 25, 2023, the Court referred the action to Magistrate Judge James L. Cott. Dkt. No. 24. On November 21, 2023, Magistrate Judge Cott issued a Report and Recommendation recommending that the Court grant Plaintiff's motion and order the SSA to pay Plaintiff's counsel \$51,257 out of the amount that the SSA has withheld from Plaintiff's past-due benefits and Plaintiff's counsel be ordered to pay his client the \$7,500 he received pursuant to the EAJA. Dkt. No. 27 at 9. Judge Cott advised the parties that they had fourteen (14) days to file written objections to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and no such objections have been filed. *Id.* at 10.

In reviewing a Magistrate Judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court reviews any portion of the report subject to an objection *de novo*; however, in the absence of any objection, the Court reviews the report and recommendation only for clear error. Fed. R. Civ. P. 72(b) Advisory Committee Notes; *Colvin v. Berryhill*, 734 F. App'x 756, 758 (2d Cir. 2018) (summary order).

The Court has reviewed the record and the Report and Recommendation for clear error and, finding none, hereby ORDERS that the Report and Recommendation is ADOPTED in its entirety, GRANTS Plaintiff's motion for attorney's fees, and AWARDS Plaintiff's counsel \$51,257.00 out of the amount that the SSA has withheld from Fabiani's past-due benefits. Plaintiff's counsel is further ordered to pay his client the \$7,500 he received pursuant to EAJA upon receipt of the \$51,257 in attorney's fees.

The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: December 11, 2023  
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written above a horizontal line.

LEWIS J. LIMAN  
United States District Judge